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In re Application of
John P. Tellkamp
Application No. 09/907,237
Filed: July 17, 2001
Attorney Docket No. TI-30628

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.10 filed, September 30, 2002

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.10."

The instant petition was filed to correct what petitioner believed was an incorrect filing date accorded the above-cited application. Petitioner maintains that the correct filing date for the application should be July 12, 2001, not the currently accorded date of July 17, 2001. In support thereof, petitioner filed a copy of the application transmittal showing a certificate of mailing dated July 12, 2001 and a copy of the United States Postal Service log for Express Mail package EL897699426US showing the package was "en route" on July 13, 2002, at 5:33 p.m.

Section 1.10(a) of the Title 37 of the Code of Federal Regulations indicates that correspondence received by the Patent and Trademark Office that was delivered by Express Mail will be considered filed in the Office on the date of deposit with the United States Postal Service. Where there is a discrepancy between the date of deposit as shown on the Express Mail label and the filing date accorded the correspondence by the Office, 37 CFR 1.10(c) provides that an applicant may petition to have the Commissioner accord the correspondence a filing date as of the "date in" on Express Mail label. In accordance with 37 CFR 1.10(c), a successful petition must:

- (1) . . . be filed promptly after the person becomes aware that the Office has accorded or will accord a filing date other than the USPS deposit date;
- (2) [provide] the number on the Express Mail mailing label was placed on a paper(s) or fee(s) that constitute the correspondence prior to the original mailing by Express Mail; and
- (3) . . . include a true copy of the Express Mail mailing label showing the date-in and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition does not satisfy the requirements of item (2) above.

Petitioner has not provided sufficient proof that Express Mail package EL897699426US was deposited with the United States Postal Service on July 12, 2001. The certificate of mailing cannot be used to establish a filing date for an application. See 37 CFR 1.8(a)(i)(A). The delivery history for the package is not sufficient proof because it only shows that the package was "en route" at 5:33 p.m. on July 13, 2001. Without any information relative to the time of pick-up or deposit, it is entirely possible that the package was deposited earlier in the day on July 13, 2001. With any renewed petition filed, petitioner must provide satisfactory evidence that the Express Mail package was either deposited or picked up on July 12, 2001.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0010.



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